

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

DAVID S. YARNALL,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No.: 05-527-SLR
	)	
CPL. ANTHONY MENDEZ, DELAWARE	)	
STATE POLICE - TROOP 7, and	)	
MILLSBORO POLICE DEPARTMENT,	)	
	)	
Defendants.	)	
	)	

**DEFENDANT MILLSBORO POLICE DEPARTMENT'S MOTION TO DISMISS AND  
MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF**

Pursuant to F.R.C.P. 12(b) (6), defendant Millsboro Police Department moves to dismiss plaintiff's Complaint for failure to state a claim upon which relief can be granted. The grounds for defendant's Motion are as follows:

1. Plaintiff's Complaint alleges that he was struck on the head "from a maglite flashlight while handcuffed by State Trooper Anthony Mendez." (Plaintiff's Complaint, Exhibit A attached hereto). According to plaintiff, the incident took place in Millsboro. Plaintiff claims he was treated for injuries at Beebe Medical Center in Lewes.

2. Plaintiff makes no allegations against the Millsboro Police Department and makes no reference to moving defendant other than in the caption of the Complaint. No facts are alleged which could render moving defendant liable to plaintiff. Because plaintiff's Complaint does not contain a short and plain

statement of any claim showing that plaintiff is entitled to relief against Millsboro Police Department, the Complaint should be dismissed. Alston v. Parker, 363 F.3d 229, 234 (3d Cir. 2004) (In order to withstand Motion to Dismiss, pro se complaint must set forth cognizable legal claims).

**WHEREFORE**, defendant Millsboro Police Department requests that plaintiff's Complaint be dismissed with prejudice for failure to state a claim upon which relief can be granted.

**AKIN & HERRON, P.A.**

/s/ Bruce C. Herron  
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